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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,735	01/10/2000	SHINICHI KURANARI	FUJR-16.835	4671
26304	7590	09/09/2005		
KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER AVELLINO, JOSEPH E	
			ART UNIT	PAPER NUMBER
			2143	
DATE MAILED: 09/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/480,735

Applicant(s)

KURANARI ET AL.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-8 are pending in this examination; claims 1 and 8 independent.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 15, 2005 has been entered.

#### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5, 7, and 8, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellington, Jr. et al. (USPN 6,175,569) (cited by Office in previous Office Action) (hereinafter Ellington) in view of Law et al. (USPN 6,330,602) (hereinafter Law)

4. Referring to claims 1 and 8, Ellington discloses a network interconnection apparatus for interconnecting a LAN and an ATM network to perform communications, comprising:

routing information managing means for managing routing information of the ATM network (e.g. abstract; Figure 6);

QoS setting means for setting QoS (i.e. traffic classes such as CBR, VBR, etc.) which the ATM network ought to guarantee, based on the type of traffic being transmitted through the ATM network, the QoS including information elements of a call connection request message (for example, priority token '100' designates MPEG-1 type of traffic whereas token '011' designates MPEG-2 type of traffic) (Figures 5, 7; col. 6, lines 24-46);

QoS guarantee determining means for determining based on the routing information (i.e. sufficient bandwidth to support connection through LAN) whether or not the set QoS can be guaranteed (Figure 7, reference character 94);

QoS adjusting means for adjusting the QoS so that the QoS can be guaranteed, if it is judged that the QoS cannot be guaranteed (Figure 7, reference characters 98 and 100, and pertinent portions of the disclosure); and

call connection control means for performing call connection according to the QoS which can be guaranteed (Figure 6, reference character 90);

Ellington does not disclose statistical information managing means for managing statistical information between a LAN terminal and another LAN terminal and QoS setting means for setting QoS which the ATM network ought to guarantee, based on measured statistics managed by the statistical information managing means. Law discloses:

statistical information managing means (i.e. the depot 54) for managing statistical information between a LAN terminal (i.e. client) and another LAN terminal (i.e. server), the statistical information includes information on traffic of two or more connections (i.e. two or more sessions are inherently shown in Figure 9 as well as the use of the term sessions plural throughout the disclosure) which may be established between a LAN terminal and another LAN terminal (choosing a server based on load balancing criteria for TCP sessions and the network states) (e.g. abstract; col. 5, line 21- to col. 6, line 14); and

QoS setting means for setting QoS (i.e. mapping QoS parameters from IP to ATM network when necessary) which the network ought to guarantee based on measured statistics (i.e. load balancing criteria and network states) by the statistical information managing means (depot) (col. 5, lines 10-20; col. 7, lines 30-40).

It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Ellington with Law to provide a good granular scalability of servers, and improved server throughput with good response time as supported by Law (abstract).

5. Referring to claim 5, Ellington in view of Law discloses the network management interconnection apparatus substantively as claimed in claim 1. Ellington further discloses QoS information notifying means for making notification of QoS information to outside (e.g. abstract). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Ellington with Law to provide a

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good granular scalability of servers, and improved server throughput with good response time as supported by Law (abstract).

6. Referring to claim 7, Ellington in view of Law discloses the network interconnection apparatus as stated in the claims above. Ellington further discloses the network interconnection apparatus is connected to a maintenance terminal unit (i.e. a LAN computer allowing a user application to re-map the ATM QoS assignments) (col. 8, lines 9-41). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Ellington with Law to provide a good granular scalability of servers, and improved server throughput with good response time as supported by Law (abstract).

7. Claims 2-4, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellington in view of Law as used in claims 1, 5, and 7 above, and further in view of Ellesson et al. (USPN 6,459,682) (cited by Office in earlier Action) (hereinafter Ellesson).

8. Referring to claim 2, Ellington in view of Law disclose the invention substantively as claimed in claim 1. Ellington in view of Law do not specifically state that the statistical information managing means manages, as the statistical information, a traffic volume which is a sum of frame sizes or a total number of frames within a fixed time interval and which reflects traffic status of the LAN, and an average traffic volume

thereof. Ellesson discloses another network interconnection apparatus wherein the statistical information managing means manages, as the statistical information, a traffic volume which is a sum of frame sizes or a total number of frames within a fixed time interval and which reflects traffic status of the LAN, and an average traffic volume thereof (col. 5, lines 63-65; col. 11, lines 11-29). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Ellington and Law with Ellesson to provide network traffic control tools enabling optimum allocation of network resources and minimizing the need to provide excess capacity in order to implement a variety of SLA agreements as supported by Ellesson (col. 2, lines 38-41).

9. Referring to claim 3, Ellington in view of Law disclose the invention substantively as claimed in claim 1. Ellington in view of Law do not specifically state selecting a constant transmission rate as service category if a maximum traffic volume is smaller than an augmented average traffic volume, and selects a variable transmission rate as the service category if the maximum traffic volume is greater than the augmented average traffic volume (col. 5, lines 55-65). Ellesson discloses another network interconnection apparatus wherein selecting a constant transmission rate as service category if a maximum traffic volume is smaller than an augmented average traffic volume, and selects a variable transmission rate as the service category if the maximum traffic volume is greater than the augmented average traffic volume (col. 5, lines 55-65). It would be obvious to a person of ordinary skill in the art at the time the invention was

made to combine the teaching of Ellington and Law with Ellesson to provide network traffic control tools enabling optimum allocation of network resources and minimizing the need to provide excess capacity in order to implement a variety of SLA agreements as supported by Ellesson (col. 2, lines 38-41).

10. Referring to claim 4, Ellington in view of Law disclose the invention substantively as claimed in claim 1. Ellington in view of Law do not specifically state adjusting a maximum burst size of QoS whose service category is variable transmission rate (paced) and whose maximum cell rate has been judged to be incapable of being guaranteed so that the QoS can be guaranteed. Ellesson discloses adjusting a maximum burst size of QoS whose service category is variable transmission rate (paced) and whose maximum cell rate has been judged to be incapable of being guaranteed so that the QoS can be guaranteed (col. 9, line 46 to col. 10, line 30). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Ellington and Law with Ellesson to provide network traffic control tools enabling optimum allocation of network resources and minimizing the need to provide excess capacity in order to implement a variety of SLA agreements as supported by Ellesson (col. 2, lines 38-41).

11. Referring to claim 6, Ellington in view of Law disclose the invention substantively as claimed in claim 1. Ellington in view of Law do not specifically state route-selecting means for selecting a route according to preferential QoS if there exists a plurality of



route options when the call connection is to be performed. Ellesson discloses route-selecting means for selecting a route according to preferential QoS if there exists a plurality of route options when the call connection is to be performed (col. 7, lines 1-15). It would be obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Ellington and Law with Ellesson to provide network traffic control tools enabling optimum allocation of network resources and minimizing the need to provide excess capacity in order to implement a variety of SLA agreements as supported by Ellesson (col. 2, lines 38-41).

### ***Response to Amendment***

12. Applicant's arguments filed August 15, 2005 have been fully considered but they are not persuasive.

13. In the remarks, Applicant argues, in substance, that (1) Law does not disclose managing statistical information of a connection between a LAN terminal and another LAN terminal since a server is not a LAN terminal and periodically probing a server to obtain statistical information is not the same as managing statistical information

14. As to point (1), Applicant's rationale is incorrect. Applicant construing limitations to the term "LAN terminal". A broad interpretation of the term would understand the terminal is merely a computer on a network. As such the "server" of Law satisfies this requirement since it is a computer and is located on a network (see Figure 8, ref. 80).

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Furthermore the use of the limitation "managing statistical information" is also extremely broad as it is used in the art. The periodic probing to obtain server statistics can be construed as managing statistical information since the information is updated in the depot when the new information from the servers is obtained. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). By this rationale, the rejection is maintained. Furthermore it is believed that the above cited passages and figures satisfy Applicant's request to specifically point out each limitation of the claim.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



JEA  
August 30, 2005



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